

PEPPER & CORAZZINI

VINCENT A. PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
JOHN F. GARZIGLIA
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
LOUISE CYBULSKI
JENNIFER L. RICHTER
* NOT ADMITTED IN D.C.

ATTORNEYS AT LAW
200 MONTGOMERY BUILDING
1776 K STREET, NORTHWEST
WASHINGTON, D. C. 20006
(202) 296-0600

ROBERT LEWIS THOMPSON
GREGG P. SKALL
E. THEODORE MALLYCK
OF COUNSEL
FREDERICK W. FORD
1908-1988
TELECOPIER (202) 296-5572

April 6, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

APR 6 1994

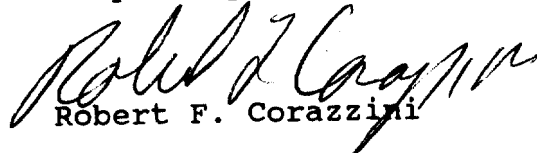
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Comments in Rulemaking Proceeding
MD Docket No. 94-19

Dear Mr. Caton:

There is transmitted herewith by Pepper & Corazzini, an original and four (4) copies of its Comments in Rulemaking Proceeding in MD Docket No. 94-19. Should there be any questions in connection with these comments, please communicate directly with the undersigned.

Very truly yours,


Robert F. Corazzini

Enclosure

No. of Copies rec'd
List A B C D E

024

RECEIVED

APR 6 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of Section 9)
of the Communications Act)

MD Docket No. 94-19

Assessment and Collection of)
Regulatory Fees for the 1994)
Fiscal Year)COMMENTS IN RULEMAKING PROCEEDING

Comes now Pepper & Corazzini on behalf of its wireless cable television system licensee clients and submits herewith its comments in the above-captioned rulemaking proceeding. These comments are limited to a single issue of interest to the wireless cable licensees. In support thereof, the following is respectfully submitted.

1. Although the rulemaking in MD Docket No. 94-19 is directed primarily at the assessment and collection of regulatory fees, the Commission also proposed to revise several sections of the rules governing the payment and collection of application fees. The Commission noted that where appropriate the authorization fees and regulatory fees collection procedures will be integrated.

2. One aspect of the Multipoint Distribution Service filing fees collection procedures which is particularly onerous and in fact unfair, is that which results from the collection of a filing fee of \$455.00 per channel upon completion of

construction pursuant to a conditional license issued for a previously constructed facility. Obviously, when a licensee constructs a new station, the filing fee requirement is clearly applicable and in the case of the E and F group facilities, amounts to \$1,820.00 per facility. However, the problem arises after a station is initially constructed with payment of the \$1,820.00 filing fee and then the licensee finds it necessary to make a change to the operating station such as a change in the make and model of the antenna or transmitters or any other change. If read strictly, upon completion of the change pursuant to a conditional license, the licensee would once again have to pay the \$1,820.00 filing fee for merely changing the antenna or polarization or any similar change. Likewise, each time in the future such a change is made, an additional \$1,820.00 filing fee would be required.

3. The Commission has recognized the unfairness of this situation by responding privately to requests for return of the filing fee through letters issued by the Executive Director. However, this is not a satisfactory solution for two reasons. The most obvious shortcoming of this individual request and response method of dealing with the problem is simply that since the rule requires the payment of the fee, only a few licensees are aware of their right to request a return of the filing fee. Even then, it is necessary for those licensees to deposit a fairly large sum of money with the FCC, go through the procedure

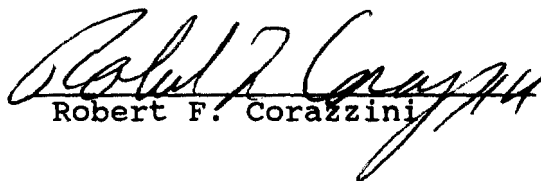
of a request for return, and have that money unavailable to them while the request is being processed.

4. The obvious solution to this situation is for the Commission to issue a clarification of its filing fee rules so that all applicants and licensees are apprised of the fact that the certificate of construction filing fee applies only to the initial construction of the station, and does not apply to modifications of that facility which do not involve the addition of a frequency(s) to that facility.

WHEREFORE, the premises considered, it is respectfully requested that the Commission use the opportunity presented in connection with the MD Docket No. 94-19 rulemaking proceeding to clarify the MDS construction filing fee matter to eliminate the uncertainty and thus, ensure that all applicants and licensees are treated in a uniform and fair manner.

Respectfully submitted,

PEPPER & CORAZZINI

By 
Robert F. Corazzini

PEPPER & CORAZZINI
200 Montgomery Building
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 296-0600

April 6, 1994